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信托法中受益人的撤销权研究

Research on the Revocation Right of the Beneficiary

Centered on the Trust Law

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## 内容摘要

信托受益人的撤销权是《中华人民共和国信托法》（以下简称《信托法》）赋予信托受益人的一项法定权利，作为受益人受益权的一项内容而存在。当受托人违反信托目的处分信托财产或者因违背管理职能、处理信托事务不当致使信托财产受到损失时，受益人有权申请人民法院撤销该处分行为，并有权要求受托人恢复信托财产的原状或者予以赔偿。

在中国，《信托法》对信托撤销权的法律规定独特，它借鉴了大陆法系一些国家的法律规定，并以我国民法中普通债权人的撤销权为蓝本，设计了我国受益人的撤销权。该权利在理论和实践上都存在一些值得探讨的问题。例如，《信托法》规定信托财产是委托给受托人而非转移给受托人的，回避了信托财产的所有权的归属，模糊了受益人撤销权行使的法理依据；受益人和委托人同时享有撤销权体现了对信托本质的独特理解；撤销权行使时信托财产的受让人和转得人承担责任的主观要件仅包括明知，而未包括应知的情形；《信托法》未规定在受益人不知道或不应当知道受托人违反信托目的处分信托财产或者因违背管理职能、处理信托事务不当致使信托财产受到损失的情况下，撤销权能够行使的最长期限；此外，受益人撤销权的行使是否一定要以提起诉讼的方式行使以及在诉讼中的举证责任分配也存在探讨空间。

以上方面均影响了受益人撤销权的行使。因此，本文从受益人撤销权的历史、属性、内容以及行使等方面出发，以完善受益人自我救济为目的，对受益人撤销权制度展开研究。借鉴英国、美国、日本、台湾等几个主要国家和地区关于受益人撤销权制度的立法经验，立足于我国的司法实际，详细分析我国信托法中受益人撤销权制度规定的不足，提出对信托法中受益人撤销权完善的建议。

**关键词：**信托；受益人；撤销权

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## ABSTRACT

The right to revocation of the trust beneficiary is a vested right which given by “Trust Law of the People’s Republic of China”, exists as a part of the content of the beneficiary’s beneficial rights. When loss of trust properties happens as a result of the fact that a trustee disposes the trust property not in accord with trust purposes or manages trust affairs improperly, the beneficiary has the right to revoke the trustee’s management action of trust and to ask trustees to resume the status quo of the trust property or give him compensation.

In Chinese Trust Law, the right of revocation has its own characters, some traditional elements of the land law system which are embodied in laws and regulations of some countries have been refereed. And the right to revocation enjoyed by the ordinary creditors’ in Chinese civil law has been refereed too. However, there are some issues of the right to revocation in Chinese trust law which have to be discussed in both theoretical and practical area. For example, in the Chinese Trust Law, the trust property is delegated to the trustees but not transferred to them, which has fenced with the issue of the ownership of the trust property and confused the beneficiary to exercise the right of revocation on the legal basis. The settlor and the beneficiary are jointly interested in the right of revocation embodied the unique understanding of the essence of trust in China. When exercise the right of rescission, the important subjective condition is responsible for the assignee which only includes be known, and does not include should know. The Chinese Trust Law does not specify that the maximum period of exercising the rescission, in the circumstances of the beneficiaries do not know or should not know the trustees who breach of trust purposes and disposal of the trust property or against management function of trust was something wrong with the result that the trust property losses. In addition, it is also be explored whether the beneficiary must be exercising the right of rescission in

the way of institute an action at law and the distribution of the burden of proof.

All aspects mentioned above have influenced the beneficiary to exercise the right of rescission. Therefore, this article carries out the research in the basis of the history, characteristic, content and exercising of the beneficiary's right of rescission, which in the purpose of perfecting beneficiary's self-reliance. It uses some important countries and areas such as the Great Britain, the United States, Japan and Taiwan province of China for reference, which based on their legislative system of beneficiary's right and China's judicial practice. The author analyzes insufficiency of Chinese trust law's regulation on the beneficiary's right, and then raises the perfect suggestions on it.

**Key Words:** Trust; Beneficiary; Revocation Right.

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